IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 42 OF 2002.

Shri Babu Esso Naik,
Motor Mechanic, Proprietor
of Santeri Motor Garage,
Near Tari Bridge,
Bastora, Goa. ... Appellant.

Versus

Mr. Maruti Gangappa Hallikar,
r/at Near Tari Bridge,
Bastora, Goa. ... Respondent.

Mr. J.P. Mulgaonkar, Advocate for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 30th January 2003.

ORAL ORDER.

The present Second Appeal has been filed by the unsuccessful plaintiff, who had filed Regular Civil Suit No. 302 of 1985, before the Civil Judge, Senior Division, Mapusa. The suit filed by the appellant/plaintiff came to be dismissed by the Judgment and Decree, dated 15th February 2000. The appellant/plaintiff being aggrieved by the dismissal of his suit filed Regular Civil Appeal No. 56 of 2000, before the Additional District Judge, Mapusa. The learned lower appellate Court, by its Judgment and Decree, dated 26th November 2001, also dismissed the appeal, maintaining the Judgment of the learned trial Court. Hence, the present Second Appeal.

2. The appellant/plaintiff had filed a suit for the relief of perpetual injunction simpliciter. His case before the learned trial Court was that he had been in peaceful possession of the garage and the suit plot since the time of lease, that is, 16th May 1964. According to him, the respondent/defendant had constructed an illegal structure in the adjoining property and was residing therein. According to him, the respondent/defendant started to build a compound wall illegally, thereby, obstructing the access to the plaintiff's garage and has also erected illegal structures. According to the appellant/plaintiff, the suit land has been used by him for the purpose of keeping the vehicles of the customers, which come to his garage for repair. According to him, on 22nd September 1985, the respondent/defendant removed the vehicles so parked and erected a barbed-wire fencing and planted coconut saplings and banana trees. The appellant/plaintiff has also alleged that the respondent/defendant encroached on his open space. The learned appellate Court examined and appreciated the evidence of the parties and found that the appellant/plaintiff had examined himself as P.W.1 and by virtue of the Lease Deed at Exhibit P.W.1/A had been granted an area of 72 square metres. The appellant/plaintiff had, accordingly, constructed the garage at his own cost. The survey plan is at Exhibit

P.W.1/B. The old survey record at Exhibit P.W.1/C shows the area to be 75 square metres and the appellant/plaintiff in his evidence claims that he had been granted an area of 72 square metres. The learned lower appellate Court found that the appellant/plaintiff had not produced any survey plan of the sub-division of the plot bearing survey no. 21/1C, though from Form I & XIV an area of 75 square metres was shown. The appellant/plaintiff had admitted that he was in possession of 8.45 x 8 metres, which is 67.6 square metres. The learned lower appellate Court also found that it was only the oral testimony of the appellant/plaintiff that the defendant had encroached on the land of the plaintiff and was interfering with the open space. Thus, after appreciating the evidence, the learned lower appellate Court came to the conclusion that the appellant/plaintiff had not been able to establish that the respondent/defendant had encroached in the open space beyond his garage so as to cause any interference in his garage. The appellant/plaintiff made a clear submission that he had not taken any permission from the Municipality to keep the vehicles outside. According to the learned lower appellate Court, the appellant/plaintiff could not show that the respondent/defendant was interfering with the enjoyment of his lease hold rights. The learned lower appellate Court then appreciated the evidence of one Parulekar,

who was examined as P.W.2. The learned lower appellate Court found that this witness had admitted in the cross-examination that he had not seen the documents of the plaintiff. Therefore, the appellate Court found that the oral testimony was of no assistance to support the case of the appellant/plaintiff. The learned lower appellate Court then appreciated the evidence of P.Ws. 3 and 4 and has held that in the absence of vital documents, namely, survey plan of 21/1C and a sketch to show the nature and the extent of the alleged encroachment, it was not possible to accept the claim of the appellant/plaintiff.

3. The learned lower appellate Court then appreciated the case of the respondent/defendant, who claimed that a plot, admeasuring 128 square metres, separately surveyed under No. 21/1D, was in his possession and enjoyment and had produced Form I and XIV at Exhibit D.W.1/A. By virtue of Order, at Exhibit D.W.1/C, the area had been separately demarcated. Though the learned lower appellate Court found that the defendant had not been able to show as to how he came in possession of the suit area, observed that it was for the plaintiff to have established that the defendant had encroached in his area.

4. I have heard Mr. Mulgaonkar, the learned

counsel appearing for the appellant and Mr. Lotlikar, the learned senior advocate appearing for the respondent.

5. No questions of law arise in the Second Appeal much less substantial questions of law. Two Courts below have concurrently held against the appellant/plaintiff. I see no perversity in the reasonings of the Courts below, warranting any interference in Second Appeal and the Second Appeal is, accordingly, dismissed in limine with no order as to costs.

(P.V. HARDAS)
JUDGE.

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